



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[Doc. # AMS-CN-12-0005]

RIN: 0581-AD23

User Fees for 2012 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) will maintain user fees for cotton producers for 2012 crop cotton classification services under the Cotton Statistics and Estimates Act and the Cotton Standards Act of 1923 at \$2.20 per bale - the same level as in 2011. This fee and the existing reserve are sufficient to cover the costs of providing classification services for the 2012 crop, including costs for administration and supervision.

EFFECTIVE DATE: [INSERT DATE ONE DAY AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Darryl Earnest, Deputy Administrator, Cotton & Tobacco Programs, AMS, USDA, 3275 Appling Road, Room 11, Memphis, TN 38133. Telephone (901) 384-3060, facsimile (901) 384-3021, or e-mail darryl.earnest@ams.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866; and, therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5U.S.C. 601-612), AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. There are an estimated 25,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR §121.201). Continuing the user fee at the 2011 crop level as stated will not significantly affect small businesses as defined in the RFA because:

(1) The fee represents a very small portion of the cost-per-unit currently borne by those entities utilizing the services. (According to USDA's Economic Research Service, the U.S. average total cost of production in 2010 was \$483 per bale. The user fee for classification services of \$2.20 per bale represents less than one half percent of this average U.S. per-bale cost of production.);

(2) The fee for services will not affect competition in the marketplace;

(3) The use of classification services is voluntary. For the 2011 crop, approximately 15.1 million bales were produced; and, almost all of these bales were voluntarily submitted by growers for the classification service; and

(4) Based on the average price paid to growers for cotton from the 2010 crop of 0.8212 cents per pound, 500 pound bales of cotton are worth an average of \$410 each. The user fee for classification services, \$2.20 per bale, is less than one percent of the value of an average bale of cotton.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501-3520), the information collection requirements contained in the regulation to be amended is currently approved under OMB control number 0581-0008, Cotton Classing, Testing and Standards.

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

This final rule establishes the 2012 user fee charged to producers for cotton classification at \$2.20 per bale – the same as the 2011 user fee. The 2012 user fee was set in accordance to section 14201 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-234) (2008 Farm Bill). Section 14201 of the 2008 Farm Bill provides that: (1) the Secretary shall make available cotton classification services to producers of cotton, and provide for the collection of classification fees from participating producers or agents that voluntarily agree to collect and remit the fees on behalf of the producers; (2) classification fees collected and the proceeds from the sales of samples submitted for classification shall, to the extent practicable, be used to pay the cost of the services provided, including administrative and supervisory costs; (3) the Secretary shall announce a uniform classification fee and any applicable surcharge for

classification services not later than June 1 of the year in which the fee applies; and (4) in establishing the amount of fees under this section, the Secretary shall consult with representatives of the United States cotton industry. At pages 313-314, the Joint Explanatory Statement of the committee of conference for section 14201 stated the expectation that the cotton classification fee would be established in the same manner as was applied during the 1992 through 2007 fiscal years. Specifically, it states that the classification fee should continue to be a basic, uniform fee per bale fee as determined necessary to maintain cost-effective cotton classification service. Further, in consulting with the cotton industry, the Secretary should demonstrate the level of fees necessary to maintain effective cotton classification services and provide the Department of Agriculture with an adequate operating reserve, while also working to limit adjustments in the year-to-year fee.

Under the provisions of section 14201, a user fee (dollar amount per bale classed) is established for the 2012 cotton crop that, when combined with other sources of revenue, will result in projected revenues sufficient to reasonably cover budgeted costs – adjusted for inflation – and allow for adequate operating reserves to be maintained. Costs considered in this method include salaries, costs of equipment and supplies, and other overhead costs, such as facility costs and costs for administration and supervision. In addition to covering expected costs, the user fee is set such that projected revenues will generate an operating reserve adequate to effectively manage uncertainties related to crop size and cash-flow timing while meeting minimum reserve requirements set by the Agricultural Marketing Service, which require maintenance of a reserve fund amount equal to at least four months of projected operating costs.

The user fee charged to cotton producers for cotton classification in 2012 is \$2.20 per bale, which is the same fee charged for the 2011 crop. This fee is based on the preseason projection that 14,475,000 bales will be classed by the United States Department of Agriculture during the 2012 crop year.

Accordingly, § 28.909, paragraph (b) reflects the continuation of the cotton classification fee at \$2.20 per bale.

As provided for in the 1987 Act, a 5 cent per bale discount will continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909(c).

Growers or their designated agents receiving classification data will continue to incur no additional fees if classification data is requested only once. The fee for each additional retrieval of classification data in § 28.910 will remain at 5 cents per bale. The fee in § 28.910 (b) for an owner receiving classification data from the National database will remain at 5 cents per bale, and the minimum charge of \$5.00 for services provided per monthly billing period will remain the same. The provisions of § 28.910 (c) concerning the fee for new classification memoranda issued from the National Database for the business convenience of an owner without reclassification of the cotton will remain the same at 15 cents per bale or a minimum of \$5.00 per sheet.

The fee for review classification in § 28.911 is maintained at \$2.20 per bale.

The fee for returning samples after classification in § 28.911 will remain at 50 cents per sample.

Summary of Comments

A proposed rule was published in the Federal Register on April 11, 2012, with a comment period of April 11, 2012 through April 26, 2012 (77 FR 21684). AMS received two

comments: one from a national trade organization that represents approximately 80 percent of the US cotton industry, including cotton producers, ginner, warehousemen, merchants, cooperatives, cottonseed processors, and textile manufacturers from Virginia to California; and one from a national trade organization comprised of eight state and regional membership organizations that represent approximately 680 individual cotton ginning operations in 17 cotton-producing states. Comments from the national trade organizations expressed support for the decision to maintain the fee at the level established for the 2011 crop. Comments may be viewed at www.regulations.gov.

Pursuant to 5 U.S.C. 533, good cause exists for not postponing the effective date of this final rule until 30 days after publication in the Federal Register because this rule maintains uniform user fees for 2012 crop cotton classification services as mandated by the Cotton Statistics and Estimates Act, at the same level as 2011.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Reporting and recordkeeping requirements, Warehouses

For the reasons set forth in the preamble, 7 CFR part 28 is amended to read as follows:

PART 28 - [Amended]

Subpart D – [Amended]

1. The authority citation for 7 CFR part 28, Subpart D, continues to read as follows:

Authority: 7 U.S.C. 51-65; 7 U.S.C. 471 - 476.

2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

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(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is \$2.20 per bale.

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3. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) *** The fee for review classification is \$2.20 per bale.

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Dated: May 30, 2012

David R. Shipman
Administrator
Agricultural Marketing Service

Billing Code: 3410-02P

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